



A Publication of the
FUNERAL DIRECTORS EXAMINING BOARD

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**Petition For Declaratory Judgment Concerning
Joint Ownership**

The Honorable Robert R. Pekowsky, Circuit Judge, Branch 5, issued a decision in regard to this matter on April 16, 1997. The conclusion in the judge's decision states: "Plaintiffs arguments are unpersuasive and cannot be supported by current law, the facts presented, or reasonable interpretations of the 1989 Wisconsin Attorney General's opinion. The creation of SCI as a level of separateness between the subsidiaries in Wisconsin and the control of SCI is insufficient to bring Plaintiffs within the requirements of the law. For the above stated reasons, summary judgment is granted for the Defendants. Plaintiffs, through their parent corporation, Service Corporation International, and its subsidiaries, are hereby found to violate secs. 157.067 and 445.12 (6), Stats." SCI has appealed the decision.

**Burial Agreements Funded By Life Insurance
Policies**

It appears that procedures have fallen into place rather nicely. The Board has registered 145 agents and has

fine-tuned various forms for registering agents and providing a notice of conversion of a burial trust to a burial agreement. The Board has clarified one issue which needed some extra attention. The result is that an agent for the sale of burial agreements must only complete one registration form and pay only one \$41 registration fee. Once registered, the agent or the funeral director or operator with whom the agent is associated must submit to the Board a NOTICE CONCERNING CONTRACT BETWEEN FUNERAL DIRECTOR OR OPERATOR OF A FUNERAL ESTABLISHMENT AND A LIFE INSURANCE AGENT (Form #234) whenever the agent has entered into a contract with a different funeral establishment or has terminated a contract with a funeral establishment.

Legislative Update

AB 506. This bill relates to the reburial of unknown human remains erroneously removed from a burial site by a cemetery authority. There was a hearing on this bill before the Assembly Consumer Affairs Committee. The Legislature has now finished its regular session and AB 506 was not included in the extraordinary special session called. The following bills listed also died in this Legislative session.

**THE WISCONSIN FUNERAL DIRECTORS
EXAMINING BOARD**

Members of the Board:

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AB 515. This bill relates to prohibiting the use of telephone solicitations to solicit the sale of burial agreements, cemetery merchandise, cemetery lots, mausoleum spaces, insurance contracts to pay for funeral merchandise or services or cemetery merchandise, or burial, funeral or preneed insurance. There ~~was~~ a hearing on this bill before the Assembly Committee on Insurance, Securities and Corporate Policy, Representative William Lorge, Chair. The Board ~~was~~ very actively involved in this bill. There was considerable interest in this bill on the part of both funeral directors and cemeteries. A companion bill, SB 292, was also introduced.

AB 400. This bill relates to regulating residential telephone solicitations for certain goods and services, including cemetery lots. There was a hearing on this bill before the Assembly Committee on Consumer Affairs, Representative Clifford Otte, Chair.

AB 707. This bill relates to requiring cemetery authorities to provide burials during each season. There was a hearing on this bill before the Assembly Committee on Small Business and Economic Development, Representative Lorraine Seratti, Chair.

Sale of Funeral Homes

The Loewen Group International, Inc., has made a number of moves to sell funeral homes and to purchase cemeteries in Wisconsin.

Several months ago the Funeral Directors Examining Board agreed to grant funeral establishment licenses to 18 funeral homes after The Loewen Group International, Inc., sold any interest that it had in them to Charon, Inc. The following funeral homes were issued new licenses under Charon, Inc.: Murray Community Funeral Home in Beaver Dam, Murray Community Funeral Home in Horicon, Murray community Funeral Home in Reeseville, Medema-Gove Community Funeral Home in Randolph, Kohls Community Funeral Home in Waupun, Goodman-Bensman Funeral Home in Milwaukee, Goodman-Bensman Funeral Home in Whitefish Bay, Thomas Hansen & Sons Funeral Home in Kenosha, Lendman-Mischler Funeral Home in Kenosha, Skubal-Slaterry Jelenc Funeral Home in West Allis, Overton Funeral Home in Janesville, Fedderly-Axtell Community Funeral Home in Wisconsin Dells, Port Axtell Community Funeral Home in Portage, Edwardson-Axtell Community Funeral Home in DeForest, Acklan Funeral Home in Racine, Laemmrich Community Funeral Home in Menasha, Schauer & Schumacher Funeral Home on Monroe Street in Green Bay, and Schauer & Schumacher Funeral Home on Fisk Street in Green Bay.

Sale of Cemeteries

The Department of Regulation and Licensing has approved the conveyance of the following cemeteries or interests in cemeteries:

Nasewaupsee Cemetery Association, Inc., was approved to convey the Schumacher Cemetery to the Town of Nasewaupsee, Door County, WI. Dated: 1/22/92.

Mount Hope Cemetery Association was approved to convey a portion of the unplatted lands of the Mount Hope Cemetery in Sparta for use as residential property. Dated: 2/17/92.

Cylon Cemetery Association was approved to convey the Cylon Church, including 7 platted cemetery lots, to a private individual. Dated: 4/28/92.

The Church of the Intercession was approved to convey the Forest Cemetery to the City of Stevens Point. Dated: 4/28/92.

Carl P. Baron, sole owner of West Lawn Memorial Park in Racine was approved to convey any and all capital stock of West Lawn Memorial Park to Service Corporation International. Dated: 12/14/93.

Charles F. Meyer, receiver of Forest Hill Memorial Park Cemetery was approved to convey the cemetery to Osiris Holding of Wisconsin, Inc. Note: On March 17, 1995, Loewen Group International, Inc., purchased the shares of Osiris Holding of Wisconsin, Inc. Dated: 1/6/94.

Appleton Highland Memorial Park, Inc. (with 100% of preferred stock owned by Service Corporation International and with Cemetery Services, Inc., serving as manager and exclusive sales agent) was approved to convey approximately 36.8 acres of Appleton Highland Memorial Park Cemetery to Jerome A. Haen and/or James Temmer, or an entity owned or controlled by the foregoing. Dated: 1/31/94.

Greenwood Cemetery Association was approved to convey the Greenwood Cemetery to the City of Monroe. Dated: 4/26/95.

Belleville Cemetery Association was approved to convey the Belleville Cemetery to the Village of Belleville. Dated: 10/31/97.

Highland Memory Gardens Cemetery Association, owner of Highland Memory Gardens Cemetery in Madison, was approved to transfer ownership to Highland Management Corporation, which had been operating the cemetery. Dated: 1/18/94.

Prairie du Chien Cemetery Association, operator of the Evergreen Cemetery in Prairie du Chien, was approved

to convey a parcel of land to the City of Prairie du Chien. Dated: **2/24/95**.

Sun Prairie Memory Garden Cemetery Association, owner and operator of Sun Prairie Memory Garden Cemetery in Sun Prairie, was approved to transfer the ownership of the cemetery to the Sun Prairie Management Corporation. Dated: **3/24/95**.

Jack Frost, Janice C. Frost, J. D. Ingram and Bettie D. Ingram, shareholders of Northern Land Company, Inc., were approved to sell to Loewen Group International, Inc., all of their stock in Northern Land Company, Inc. Northern Land Company, Inc., will continue to manage Greenlawn Memorial Park in Sheboygan, which is owned by Sheboygan County Cemetery Association. Dated: **8/28/97**.

Jack Frost, Janice C. Frost, J. D. Ingram and Bettie D. Ingram, shareholders of Northern Land Company, Inc. were approved to sell to Loewen Group International, Inc., all of their stock in Northern Land Company, Inc. Northern Land Company, Inc., will continue to manage Ledgeview Memorial Park Cemetery in Fond du Lac, which is owned by Ledgeview Memorial Park, a Wisconsin cemetery association. Dated: **8/28/97**.

Jack Frost, Janice C. Frost, J. D. Ingram and Bettie D. Ingram, shareholders of Northern Land Company, Inc. were approved to sell to Loewen Group International, Inc., all of their stock in Northern Land Company, Inc. Northern Land Company, Inc., will continue to manage Greenlawn Memorial Park in Neenah, which is owned by Greenlawn Memorial Park, a Wisconsin cemetery association. Dated: **8/28/97**.

William M. Landers, sole holder of all of the preferred stock of Milton Lawns, was approved to sell to Loewen Group International, Inc., all of his preferred stock in Milton Lawns Memorial Park of Janesville, Inc. Milton Lawns Memorial Park of Janesville, Inc., owns and operates Milton Lawns Memorial Park in Janesville. Dated: **10/31/97**.

Sun Prairie Management Corporation, owner and operator of the Sun Prairie Memory Garden Cemetery in Sun Prairie, was approved to convey its operating assets and cemetery property to Loewen Group International, Inc., and its assignee, Great Lakes Cemeteries I, Inc., was approved to receive the assets of Sun Prairie Cemetery. Dated: **12/18/97**.

Arlington Park Cemetery, Inc., was approved to convey Arlington Park Cemetery in Greenfield to the Loewen Group International. Dated: **1/8/98**.

Richard D. Cody, manager of the Sunrise Memorial Gardens Cemetery in Sheboygan, WI, was approved to sell his exclusive right, title and interest in managing the Sunrise Memorial Gardens in Sheboygan to Loewen Group International, Inc. The Sunrise Memorial Gardens Cemetery Association, owns and operates Sunrise Memorial Gardens. Loewen was approved to assign the rights of the management agreement to its subsidiary, Great Lakes Cemeteries I, Inc. Dated: **1/14/98**.

Richard D. Cody, Richard L. Tucker and Donna J. Tucker, joint managers of the Mormon Coulee Memorial Park in La Crosse, were approved to sell and assign their management rights to Loewen Group, International, Inc., which formed a wholly-owned subsidiary by the name of Great Lakes Cemetery I, Inc., to receive the rights of the management agreement. Mormon Coulee is owned by the La Crosse County Cemetery Association. Dated: **2/5/98**.

Clyde Rupnow and LuAnn Rupnow, sole shareholders of Perfection Management Corporation which owns and operates the Glenview Memorial Gardens Cemetery in Ixonia, were approved to convey all of the outstanding stock of Perfection Management Corporation to The Loewen Group International, Inc. Perfection Management Corporation will remain as owner of the cemetery. Dated: **3/4/98**.

Highland Management Corporation, owner and operator of Highland Memory Gardens Cemetery in Madison, was approved to convey the assets of Highland Memory Gardens Cemetery to Loewen Group International, Inc., and its assignee, HMC Acquisition, Inc. Loewen Group International, Inc., will remain the sole shareholder of HMC Acquisition, Inc. HMC Acquisition, Inc., will own and operate the cemetery. Dated: **3/4/98**.

James B. Stanley and Timothy J. Stanley, the only two shareholders of Roselawn Memorial Park Company, Inc., which owns and operates Roselawn Memorial Park in Monona, WI, were approved to sell all of their stock to Loewen Group International, Inc. Dated: **9/2/98**.

The Restlawn Memorial Park Association was approved to convey several acres in the City of Wausau to a private party. Approved: **10/19/98**. Note: Loewen Group International, Inc., purchased the shares of Osiris Holding Corporation on March **17, 1995**. Osiris Holding Corporation is the parent of Knollwood Memorial Park, Inc., which owns and operates Knollwood Memorial Park in Manitowoc, Wisconsin.

Licensing of Crematories and Crematory Operators

No bill was introduced during the 1997 session of the Legislature; however, both the Funeral Directors Examining Board and the Cemetery Advisory Committee have discussed the need for regulation. Most recently the Funeral Directors Examining Board requested one of its members to propose some recommendations to the full board. It is hard to say whether a bill will come out of these discussions. In any case, the interest of the Department of Regulation and Licensing would be to determine whether any additional regulation is needed and what level of regulation is needed to adequately protect the public.

Cemeterians Acting As Funeral Directors

As you **know**, the law prohibits joint ownership of cemeteries and funeral homes. It is also illegal for a cemetery authority, cemetery salesperson or a preneed seller to tell the public when selling lots or cemetery merchandise that they represent a funeral home. ~~Has~~ false representation been a problem? That's what the Joint Committee For Review of Administrative Rules asked at a hearing on July 1, 1997. The committee requested that Secretary Marlene Cummings investigate this issue and report back to the committee. The investigation showed that there was at least one complaint containing an allegation of misrepresentation. One cemetery had distributed a casket price list which referred to the cemetery **as** a "funeral establishment"; however, the document was an internal document which had been formatted from a funeral establishment document and the cemetery had failed to remove the words "funeral establishment."

The report concluded that misrepresentation does not appear to be a problem of an especially serious nature.

Examination Notice

Beginning with the January 1998 examinations, changes in the content of the examinations will be implemented **as** follows:

1. The Funeral Service Science examination (175 questions) will contain no questions specific to state or federal laws. **All** of these questions are now in the Funeral Service Arts examination.
2. The Funeral Service Arts examination (145 questions) contains only questions relating to state and federal laws governing funeral services.
3. The Reciprocal Funeral Service examination (106 questions) is now a single examination covering Wisconsin laws governing funeral services.

The exam content outlines, which are sent to examination candidates, list the specific contents of the examinations.

Complaints Against Licensees

Complaints are processed in **the** following manner:

All complaints received by the Funeral Directors Examining Board and the Department are routed to the Division of Enforcement (DOE) where they are logged into the computer and given a number.

Complaints are screened by several board members and the supervisor of the DOE prosecutors and the supervisor of the DOE investigators. The complaint screening process results in a decision to open or not open a complaint for investigation. Sometimes additional information is requested of the complainant at this stage of the process. Most boards are now moving toward screening complaints at least once a month.

If a complaint is opened for investigation, it is assigned to a team in DOE. Teams consist of prosecutors, investigators, legal assistants **and**, in some cases, auditors. A specific prosecutor and investigator is assigned to the case and the investigator commences an investigation **as** soon **as** possible. The investigation generally includes corresponding with the complainant, the licensee and other people with relevant information. Documents are reviewed and the investigator often interviews people to obtain more information.

A board member is assigned to the case **as** an advisor. The board member offers suggestions to the investigator and, after the investigation is concluded, the advisor recommends that the case be closed for a certain specified reason or that the case proceed to possible disciplinary action.

If the case advisor recommends possible disciplinary action, a prosecutor reviews the file and requests additional investigation, if needed. The prosecutor usually offers the licensee an opportunity to agree to a resolution of the matter. The offer may be in the form of a written stipulation for some type of discipline, such **as** a revocation, suspension, limitation, reprimand, and/or **an** assessment of all or part of the costs of the investigation and prosecution. If the licensee rejects the stipulation, the attorney schedules a hearing before an administrative law judge. The hearing is like a trial and the licensee may have an attorney represent him or her. After the hearing, the administrative law judge prepares a proposed decision and refers it to the Board.

If a case advisor recommends that a case be closed, the case is reviewed by the Board at its next meeting and

the Board either concurs or refers the case for disciplinary action. Stipulations and proposed decisions are also referred to the Board for final disciplinary action. If the Board disagrees with a proposed stipulation, the Board may refer the case back to the prosecutor for more negotiations or, possibly, a hearing. If the Board disagrees with a proposed decision of an administrative law judge, it may change parts of the proposed decision, but it will have to explain why it is making the change.

There is considerable due process built into the complaint process. Licensees or their attorneys are given many opportunities to respond to proposals and to object to decisions. Ultimately, if a licensee disagrees with the Board's disciplinary decision, the licensee may appeal the case to the Court of Review.

Letters are sent to complainants and licensees at various stages in the process, informing them of receipt of a complaint and the final disposition of a complaint.

New Board Members

Peter Schils and Rick Unbehaun are the newest members of the Board. Mr. Schils is a public member and Mr. Unbehaun is a funeral director member.

Peter Schils has been a real estate broker for 35 years. He operates Schils Real Estate, Inc., in Sheboygan. He was a member of the Real Estate Board for 8 years and the Chairman of the Board for at least half that time. He was president of the Wisconsin Realtors Association in 1985.

Rick Unbehaun began his apprenticeship as a funeral director in 1967. He has been a licensed funeral director and embalmer since 1971. He is the Assistant Manager of the Pratt Funeral Service, Inc., in Richland Center.

Disciplinary Actions

LOWELL E. STUESSY	REVOCATION
MONROE, WI	

Stuessy took undue advantage of patrons, committed fraudulent acts in the conduct of business or profession of funeral directing or embalming, failed to retain all payments made under prepayment funeral agreements as trust funds until occurrence of the death of the potential decedent, failed to deposit all trust funds with a depository institution in this state, gave misleading or deceptive information to families or persons involved in the arranging of funeral directing which falls below minimal standards, etc. Stuessy may petition the Board for reinstatement of license after 5 years. Stuessy may not directly or indirectly participate in the ownership, operation or management of any Wisconsin licensed funeral establishment, nor may he be on the premises

of any previously-owned Stuessy funeral establishment, except to attend funerals as a mourner or to carry out pastoral duties as an ordained minister when requested to do so by the family of the decedent. Effective: 9/2/97.

New License Required

A person (individual, corporation, partnership, cooperative, ~~firm~~ or association of individuals) who purchases a funeral establishment is required to obtain a new establishment license before operating the funeral establishment under the new ownership.

Other matters must also be given some attention. For example, if the previous owner was a corporation and the letterhead and the advertising included the corporate name, these materials must be changed, so that the new owner's name is contained in them. Note, however, that a funeral establishment may simply use a business name, such as ABC Funeral Homes. Such a business name could have been used by the previous owner and might still be used by the new owner.

Turning to a related issue, whenever a funeral establishment moves to a new location, it must obtain a new establishment license. A representative of the Funeral Directors Examining Board will inspect the new location and determine that all requirements relating to embalming are satisfied.

FD 1.09 Preparation rooms. (1) Every installation used for embalming operations must contain a floor area of not less than 100square feet per embalming table and must be used solely for this purpose. It must be isolated by walls or adequate partitions. The walls and furniture must be constructed of material that is easily washed and disinfected. The installation must be equipped with hot and cold running water supply under pressure and in a quantity sufficient for the operations performed therein as well as for cleaning the room. Waste water must flow into the main sewer if available or into an adequate septic tank. Hand washing facilities should be easily accessible.

(2) All preparation rooms in funeral establishments must be equipped with adequate sanitary facilities so that no health hazards are produced as a result of embalming operations performed therein.

(3) All preparation rooms shall be equipped with a ventilating system capable of expelling gases or fumes to the outside at a point so as not to create a nuisance, and shall also be equipped with a hard surface, metal or porcelain top embalming table, a set of essential embalming instruments and a supply of disinfectants.

Department of Regulation and Licensing
Funeral Directors Examining Board
P.O. Box 8935
Madison, WI 53708-8935

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Telephones

The Division of Business Licensure & Regulation has a menu telephone system which is designed to more efficiently direct the caller to the appropriate section. The telephone number for staff is:

(608) 266-5511

After dialing this number you are asked to press various menu choices. For the following requests, please press numbers as noted:

Applications Forms	Press 11
Complaints Against Licensees	Press 12
Whether A Person is Licensed	Press 21
Change of Address or Name	Press 21
Application Processing & Requirements	Press 42
Changes of Employment	Press 22

Visit the Department's Web Site

<http://badger.state.wi.us/agencies/drl/>

Send comments to dorl@mail.state.wi.us

Wisconsin Statutes and Code

Copies of the Funeral Directors Examining Board Statutes and Administrative Code can be ordered through the Board Office. Include your name, address, county and a check payable to the Department of Regulation and Licensing in the amount of \$5.28. The latest edition is dated January, 1997.

Change of Name or Address?

Please photocopy the mailing label of this digest, make changes in name or address, and return it to the Department. Confirmation of changes are not automatically provided.

WIS. STATS. S. 440.11 ALLOWS FOR A \$50 PENALTY TO BE IMPOSED WHEN CHANGES ARE NOT REPORTED WITHIN 30 DAYS.

Subscription Service

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